

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NICKIE T. GRAY,)	CASE NO. 4:09CV1468
)	
PLAINTIFF,)	JUDGE PETER C. ECONOMUS
)	
V.)	
)	
COMMISSIONER OF SOCIAL)	MEMORANDUM OPINION
SECURITY,)	AND ORDER
)	
DEFENDANT.)	

This matter is an action to review a final decision of the Commissioner of Social Security partially denying Plaintiff's application for (1) a Period of Disability; (2) disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§416(i) and 423 *et seq.*, and (3) supplemental security income (SSI) pursuant to 42 U.S.C. §1381, *et seq.*

On July 14, 2009, pursuant to L.R. 72.2, this matter was automatically referred to Magistrate Judge Greg White for a report and recommendation. On March 31, 2010, the Magistrate Judge issued a Report and Recommendation (R&R), recommending that the Court deny Plaintiff's appeal and affirm the decision of the Administrative Law Judge (ALJ). (Dkt. # 20). Plaintiff timely filed objections to the Magistrate Judge's R&R. (Dkt. # 21). Defendant has filed a Response to Plaintiff's objections. (Dkt. # 22).

Plaintiff's objection to the Magistrate Judge's is not entirely clear. He asserts that

“the Magistrate Judge referred to Dr. Konieczny’s report and undersigned counsel’s reference to it as not providing a basis for showing that the A.L.J.’s decision went beyond and outside of his ‘zone of choice.’” (Dkt. # 21 at 1). Plaintiff goes on to point out that the ALJ’s “zone of choice” is limited, and then asserts that “the limitations in Counsel’s 3 hypotheticals (R. 413-16), summarized by the Magistrate Judge at pages 4-5 of his Report, are supported by the Record.” (Dkt. # 21 at 2). Plaintiff then lists three references to the record, from which he asserts the facts of his hypotheticals were taken.

Plaintiff seems to argue that because his counsel’s hypotheticals were supported by evidence in the record, they should have been determinative of his employability. This is incorrect. As the Magistrate Judge correctly noted, “An ALJ’s decision will be affirmed if it is supported by substantial evidence. It is immaterial if substantial evidence also supports a contrary position.” (Dkt. # 20 at 11). “Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way.” Casey v. Sec. of Health and Human Services, 987 F.2d 1230, 1233 (6th Cir. 1993).

Plaintiff has failed to demonstrate that the ALJ’s decision was not supported by substantial evidence.

The Court has reviewed the Report and Recommendation of the Magistrate Judge *de novo* and finds that it is well-supported, and that Plaintiff’s objections are without merit.

Therefore, the Report and Recommendation of Magistrate Judge White is hereby

ADOPTED. (Dkt. # 20). The decision of the Commissioner is **AFFIRMED**. Accordingly, this matter is **DISMISSED**.

IT IS SO ORDERED.

/s/ Peter C. Economus - May 25, 2010
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE